

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-04-IH-0654
)	
International Telecom Exchange, Inc.)	NAL/Acct. No. 200632080161
)	
Apparent Liability for Forfeiture)	FRN 0013218409
)	

ORDER OF FORFEITURE

Adopted: July 26, 2007**Released: July 27, 2007**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Order of Forfeiture* (“*Order*”), we assess a monetary forfeiture of \$28,062 against International Telecom Exchange, Inc. and International Telecom Exchange Group, Inc. (collectively, “ITE”). We find that ITE willfully and repeatedly failed to respond on a timely basis to a directive of the Enforcement Bureau (“Bureau”) to provide certain information and documents. Further, we find that ITE has violated section 64.604(c)(5)(iii)(A) of the Commission’s rules by willfully and repeatedly failing to contribute to the Telecommunications Relay Service (“TRS”) Fund on a timely basis.¹

II. BACKGROUND

2. The facts and circumstances of this cases are set forth in the *Notice of Apparent Liability for Forfeiture and Order* (“*NAL*”) previously issued by the Commission, and need not be repeated at length here.² ITE characterizes itself as a provider of residential and business long distance telephone service, international telephone services, and pre-paid phone card services.³ On January 26, 2005, the Bureau sent ITE a letter of inquiry (“*LOI*”)⁴ requiring the company within twenty days to answer certain questions and produce certain information concerning its compliance with a variety of Commission rules, including section 64.604(c)(5)(iii)(A), which requires carriers providing interstate telecommunications services to contribute to the fund that supports TRS on the basis of their interstate end-user telecommunications revenues.⁵ Upon ITE’s request, the Bureau granted ITE an extension of time until March 25, 2005 to respond to the *LOI*, but the company failed to produce any information until

¹ 47 C.F.R. § 64.604(c)(5)(iii)(A).

² See *International Telecom Exchange, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 21 FCC Rcd 6232 (Enf. Bur. 2006).

³ See <http://www.itetelecom.com> (accessed May 17, 2007).

⁴ See Letter from Hillary DeNigro, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Brian Jarrah, President/CEO, International Telecom Exchange, Inc. (dated January 26, 2005) (“*January 26, 2005 LOI*” or “*LOI*”).

⁵ 47 C.F.R. § 64.604(c)(5)(iii)(A).

September 2005, and only after repeated efforts by Bureau staff to elicit a response.⁶ ITE paid past due TRS contributions on May 31, 2006.

3. On June 1, 2006, the Bureau issued the *NAL* in the amount of \$28,062 against ITE for apparently failing to respond on a timely basis to a directive of the Bureau to provide certain information and documents, as well as apparently failing to contribute to the TRS Fund. The *NAL* ordered ITE to pay the proposed forfeiture or respond to the notice within 30 days, submitting evidence and arguments in response to the *NAL* to show that no forfeiture should be imposed or that some lesser amount should be assessed.⁷

4. On August 10, 2006, ITE requested an extension of time in order to submit a settlement proposal.⁸ On August 11, 2006, Bureau staff extended the period of time for ITE to respond to the *NAL*, giving ITE until September 14, 2006.⁹ On August 24, 2006 ITE stated that the company was unable to pay the forfeiture proposed in the *NAL*.¹⁰ Bureau staff informed counsel for ITE that under Commission precedent, inability to pay claims are based on a company's average gross revenue, as demonstrated by a company's tax returns for the most recent three-year period, and that any information that ITE wished to provide the Bureau, including a response to the *NAL*, must be submitted before September 14, 2006.¹¹ To date, ITE has still not paid the forfeiture amount, submitted a formal response to the *NAL*, or provided any documentation in support of its inability to pay claim.

III. DISCUSSION

5. We find by a preponderance of the evidence that ITE has willfully and repeatedly failed to respond on a timely basis to a directive of the Bureau to provide certain information and documents, and willfully and repeatedly violated section 64.604(c)(5)(iii)(A) by failing to contribute to the TRS Fund on a timely basis. Although ITE has asserted through informal means that it has paid some portion of its TRS balance and that it is unable to pay the forfeiture proposed in the *NAL*, it has never formally responded to the *NAL*, and its arguments are nonetheless meritless.

⁶ *NAL*, 21 FCC Rcd at 6234-35, ¶¶ 7-11.

⁷ *Id.* at ¶ 28.

⁸ Electronic mail message from Lance Steinhart, counsel to International Telecom Exchange, Inc. to Eric Bash, Assistant Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (dated August 10, 2006).

⁹ Electronic mail message from Eric Bash, Assistant Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission to Lance Steinhart, counsel to International Telecom Exchange, Inc. (dated August 11, 2006).

¹⁰ Electronic mail message from Lance Steinhart, counsel to International Telecom Exchange, Inc. to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (dated August 24, 2006).

¹¹ Electronic mail message from David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission to Lance Steinhart, counsel to International Telecom Exchange, Inc. (dated August 28, 2006). *E.g.*, *Coleman Enters., Inc.*, Order of Reconsideration, 16 FCC Rcd 10023, 10024, ¶ 6 (2001) ("the Commission has discretion to determine what documentation it considers as reliable and objective evidence of ability to pay"); *Hoosier Broad. Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8640, 8641, ¶ 7 (Enf. Bur. 2000) ("[c]laims of inability to pay should be supported by tax returns or other financial statements prepared under generally accepted accounting procedures for the most recent three year period.") (quoting *Barry A. Stevenson Edmonds*, Order, 12 FCC Rcd 1976, 1977, ¶ 5 (Compliance and Information Bur., 1997)).

6. Under section 503(b)(1)(B) of the Act, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.¹² Section 312(f)(1) of the Act defines willful as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.¹³ The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act,¹⁴ and the Commission has so interpreted the term in the section 503(b) context.¹⁵ The Commission may also assess a forfeiture for violations that are merely repeated, and not willful.¹⁶ “Repeated” means that the act was committed or omitted more than once, or lasts more than one day.¹⁷ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.¹⁸ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or a Commission order or rule.¹⁹

7. Section 503(b)(2)(B) of the Act authorizes the Commission to assess a forfeiture of up to \$130,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,325,000 for a single act or failure to act.²⁰ In determining the appropriate forfeiture amount, we consider the factors enumerated in section 503(b)(2)(D) of the Communications Act of 1934, as amended (the “Act”), including “the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”²¹

8. Section 1.80 of the Commission’s rules and the Commission’s Forfeiture Policy Statement establish a base forfeiture amount of \$3,000 for failure to file required forms or information, and \$4,000 for failure to respond to a Commission communication.²² ITE’s failure to respond to the Bureau’s inquiries for approximately eight months occurred following two extension requests by ITE of the required response deadline, repeated promises that a response would be submitted soon, and numerous

¹² 47 U.S.C. § 503(b)(1)(B).

¹³ 47 U.S.C. § 312(f)(1).

¹⁴ H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982).

¹⁵ See, e.g., *Application for Review of Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, ¶ 5 (1991) (“*Southern California Broadcasting Co.*”).

¹⁶ See, e.g., *Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359 (2001) (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator’s repeated signal leakage) (“*Callais Cablevision, Inc.*”).

¹⁷ *Id.* at 1362, ¶ 9; *Southern California Broadcasting Co.*, 6 FCC Rcd at 4388, ¶ 5.

¹⁸ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

¹⁹ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, ¶ 4 (2002) (forfeiture paid).

²⁰ 47 U.S.C. § 503(b)(2)(B); see also 47 C.F.R. § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004).

²¹ 47 U.S.C. § 503(b)(2)(D).

²² 47 C.F.R. § 1.80; *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17114 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999).

attempts by Bureau staff to obtain a response from ITE.²³ The company provided a full response to the LOI only after the Bureau expended significant resources to obtain one.

9. We find that the substantial delay in responding to the LOI in the circumstances presented here warrants a substantial increase to the base amount. Misconduct of this type exhibits a blatant disregard for the Commission's authority that cannot be tolerated, and, more importantly, threatens to compromise the Commission's ability to adequately investigate and enforce violations of its rules. In this case, the misconduct inhibits our ability to adequately detect and deter potential rule violations in areas of critical importance to the Commission, *i.e.*, the reporting and contribution requirements for federal regulatory programs. Considering all these circumstances and taking into account the factors enumerated in section 503(b)(2)(D) of the Act, we impose a forfeiture against ITE of \$15,000 for failing to respond to the LOI on a timely basis.

10. We also find that ITE has failed to make any TRS Fund contributions on a timely basis since it began providing telecommunications service in 2002. In response to ITE counsel's statement in telephone conversations that the company had paid some portion of its TRS balance, Bureau staff contacted the TRS administrator to review the company's payment history. ITE did, in fact, make payments of \$4,350.93 on July 26, 2005, and \$5,784.52 on May 31, 2006. Both of these payments, however, were received many months after originally due.²⁴ Where a carrier fails to satisfy its TRS obligations for an extended period of time, it thwarts the Commission's responsibility to ensure that telecommunications relay services "are available to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States."²⁵

11. The Commission has established a base forfeiture amount of \$10,000 for each instance in which a carrier fails to make required TRS contributions in a timely manner.²⁶ We find ITE liable for a base forfeiture in the amount of \$10,000 for failing to timely pay its TRS Fund contribution that was due on September 26, 2005. In the past the Commission has also imposed an upward adjustment to forfeitures for the failure to pay TRS Fund contributions based on half the companies' unpaid contributions.²⁷ Given that ITE has failed to make any TRS Fund contribution on time since it began providing telecommunications service in 2002, we find that an upward adjustment, in an amount approximately one-half of the carrier's unpaid TRS Fund contributions (\$6,124)²⁸ is appropriate for ITE's failure to timely pay its TRS Fund contribution due on September 26, 2005. Taking into account the factors enumerated in section 503(b)(2)(D) of the Act, we conclude that an upward adjustment of \$3,062

²³ *NAL*, 21 FCC Rcd at 6233-35, ¶¶ 4-12.

²⁴ The first payment related to ITE's 2003 and 2004 499-A filings; payment is due in the same year as the filing to which it relates. The second payment related to ITE's 2005 499-A filing; payment was due on September 26, 2005, but ITE did not make the payment until May 31, 2006, after the TRS administrator transferred the delinquent debt to the Commission for collection, and the Commission demanded payment. The amount of the Commission's demand was actually higher – \$6,124.49 – because it included not only the delinquent debt, but also accrued interest, administrative costs, and penalties. As indicated below in the text, this is the figure the Bureau staff used for purposes of applying an upward adjustment to the forfeiture for ITE's failure to pay its TRS Fund contributions on a timely basis.

²⁵ 47 U.S.C. § 225(b)(1).

²⁶ *See, e.g., Globcom, Inc.*, Order of Forfeiture, 21 FCC Rcd. 4710, 4721-24 ¶¶ 31-38 (2006).

²⁷ *See, e.g., id.*, 21 FCC Rcd at 4727, ¶ 5.

²⁸ *See NAL*, 21 FCC Rcd at 6235, ¶ 12.

is reasonable, and find ITE liable for a total forfeiture of \$13,062 for its willful and repeated violations of section 64.604(c)(5)(iii)(A) of the Commission's rules.²⁹

12. After requesting time to make a settlement proposal, ITE claimed that it is unable to pay the forfeiture proposed in the NAL.³⁰ Bureau staff advised the company that under Commission precedent, inability to pay claims are assessed based on a company's average gross revenue, as demonstrated by a company's tax returns for the most recent three-year period, and informed the company that it could submit information in support of its claim by September 14, 2006.³¹ The company did not submit any additional information, and has failed to substantiate its claim that it is unable to pay the proposed forfeiture. Moreover, the Commission has held that forfeitures of approximately eight percent of a company's average gross revenue are appropriate.³² In response to the January 26, 2005 LOI, ITE submitted tax returns for 2002 and 2003. The \$28,062 forfeiture proposed in the NAL and affirmed here is substantially below eight percent of the company's average gross revenue for this period, and the other information provided with the company's September 19, 2005 LOI Response does not demonstrate that the company is unable to pay the forfeiture. Accordingly, we reject ITE's claim that it is unable to pay the forfeiture.

13. In conclusion, we find that a forfeiture in the amount of \$28,062 is warranted. The total forfeiture amount of \$28,062 includes: (1) a penalty of \$15,000 for failing to respond on a timely basis to a directive of the Bureau to provide certain information and documents; and (2) a penalty of \$13,062 for failing to make its TRS program contribution when due on September 26, 2005. We again caution that additional violations of the Act or the Commission's rules could subject ITE to further enforcement action. Such action could take the form of higher monetary forfeitures and/or possible revocation of ITE's operating authority, including disqualification of ITE's principals from the provision of any interstate common carrier services without the prior consent of the Commission.³³

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED THAT, pursuant to section 503(b) of the Communications Act of 1934, as amended,³⁴ and sections 0.111, 0.311, and 1.80 of the Commission's rules,³⁵ that International Telecom Exchange, Inc. and International Telecom Exchange Group, Inc. SHALL FORFEIT to the United States government the sum of \$28,062 for willfully and repeatedly violating the Commission's rules.

²⁹ 47 C.F.R. § 64.604(c)(5)(iii)(A).

³⁰ Electronic mail message from Lance Steinhart, counsel to International Telecom Exchange, Inc. to David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission (dated August 24, 2006).

³¹ Electronic mail message from David Janas, Special Counsel, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission to Lance Steinhart, counsel to International Telecom Exchange, Inc. (dated August 28, 2006).

³² *Coleman Enters.*, 16 FCC Rcd at 10024-26, ¶¶ 4-8 (forfeiture not deemed excessive where it represented approximately 7.96 percent of the violator's gross revenues); *Hoosier Broad.*, 15 FCC Rcd at 8641, ¶ 7 (forfeiture not deemed excessive where it represented approximately 7.69 percent of the violator's gross revenues).

³³ See *Business Options, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6881, 6894, ¶ 36 (2003); *NOS Communications, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 18 FCC Rcd 6952, 6965, ¶ 27 (2003).

³⁴ 47 U.S.C. § 503(b).

³⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.³⁶ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.³⁷

16. IT IS FURTHER ORDERED that a copy of the Order by certified mail/return receipt requested to Charles H. Helein, Helein & Marashlian, LLC, the CommLaw Group, 1483 Chain Bridge Road, Suite 301, McLean, VA 22101.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief
Enforcement Bureau

³⁶ 47 U.S.C. § 504(a).

³⁷ See 47 C.F.R. § 1.1914.